

## **B. Pricing of the Interstate Common Line Elements**

As noted previously, LECs currently recover the interstate portion of local loop costs through two common line elements -- the End User Common Line and Carrier Common Line charges.<sup>27</sup> The EUCL charge is assessed directly upon the end user of the common line, while the CCL charge is assessed upon access customers (usually IXCs) that originate or terminate interstate calls on common lines.

MFS proposes that the LECs be permitted to collect the EUCL charge from entities purchasing unbundled common lines, in lieu of collecting these charges from the ultimate end user (with whom the LEC may not have any business relationship in a competitive environment). If a competitor uses the LEC's common line facilities to provide exchange access to end users, the LEC is clearly incurring the same cost for those facilities as it would incur if the LEC directly provided exchange access service to those end users. It is, therefore, appropriate that the LEC be permitted to recover its interstate EUCL charge from a competitor using its facilities in the same manner as it does from end users using similar facilities.

However, the LECs should not be permitted to assess CCL charges with respect to minutes of use originating or terminating on unbundled common lines. It would be impossible for the LECs to measure such minutes, since traffic on unbundled common lines would not pass through a LEC switch; therefore, the LECs could not assess the CCL directly but would have

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<sup>27</sup> High-cost LECs also are reimbursed for a portion of their interstate loop costs through the Universal Service Fund ("USF") administered by the National Exchange Carrier Association ("NECA"). The USF is funded through charges paid directly by interexchange carriers to NECA, and would not be affected by this proposed rulemaking.

to impose some type of surrogate charge.<sup>28</sup> But, since the amount of the CCL charge is adjusted annually by price cap carriers based upon a calculation of effective rates per measured minute of use, 47 C.F.R. § 61.46(d), use of a surrogate charge could result in over-recovery of costs. This is so because application of the computed CCL charge to the measured minutes of use would provide the LECs with full recovery of costs, and any additional "surrogate" charge could result in double recovery. In addition, any "surrogate" charge would necessarily be imposed on the competitor using the unbundled loop, rather than on the IXCs originating or terminating traffic on the loop, as there would be no way to identify the latter. The competitor would then have to pay *more* for the use of a loop than an end user does, which would defeat the purpose of unbundling and be detrimental to the development of competition.

### **C. Voluntary Pricing Standards for State Unbundled Loop Tariffs**

The availability of unbundled loops at cost-based prices is essential to the development of competition in the local exchange market. As long as competitors are forced to purchase network components that they do not need, they are denied the opportunity to deploy lower cost or value-added alternatives to provide the same service offered by incumbent LECs. As a result, consumers lose the benefits of a competitive market.

The availability of loops on an unbundled basis, however, is only half the equation. The loops must be priced in a manner that allows carriers to offer IXCs and end users a competitive-

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<sup>28</sup> In its waiver petition, New York Telephone recognized the impossibility of measurement and proposed not to assess the CCL on unbundled loops.

ly priced service.<sup>29</sup> An unbundled loop in combination with an unbundled port provides the exact same service and functionalities as the local exchange access line provided by the LECs. In order to discourage LECs from implementing anticompetitive pricing policies that would artificially depress the demand for a competitor's service, the Commission should adopt voluntary pricing guidelines for the intrastate portion of unbundled loops that are premised on the LECs' cost in providing the service and that reflect this functional equivalency. By making the pricing guidelines voluntary and subject to the approval of state regulatory bodies, the Commission would not intrude on the states' jurisdiction over intrastate charges.

#### **1. Guidelines For Establishing Cost-Based Prices**

Absent any mitigating circumstances that might justify lower rates, the LEC's Total Service Long Run Incremental Costs ("TSLRIC") should serve as the target price and cap for unbundled loops where such loops must be employed by competitive carriers to compete realistically and practically with the entrenched monopoly service provider. TSLRIC is the direct economic cost of a given facility, including cost of capital, and represents the cost that the LEC would otherwise have avoided if it had not installed the relevant increment of plant -- *i.e.*, local loops in a given region. Thus, by leasing a loop to a competitor, an incumbent LEC would be allowed to recover no less than the full cost it would otherwise have avoided had it

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<sup>29</sup> Anne Bingaman of the U.S. Department of Justice's Antitrust Division made a similar observation in her recent speech before the National Press Club: "To say that unbundling must take place, for example, begs the questions of the price of the unbundled network elements, the relation between those prices and the retail price of unbundled service and what sort of volume discount structure can be applied to either set of prices. The answers to these questions in turn will determine the marketplace effectiveness of the unbundling." See "Promoting Competition In Telecommunications," *supra*, at 14.

not built the increment of plant that it has made available, through loop unbundling, for use by a competitor in serving the customer to whose premises the loop extends. For purposes of calculating TSLRIC-capped rates for unbundled loops, the LEC would be required to perform long run incremental cost studies for each component of the local exchange access line, including the loop, port, cross-connect element and local usage elements. The Commission should define a relevant increment of loop plant, based on density and length per wire center, on a per loop basis, and establish appropriate cost allocation and separations rules that can be incorporated into the cost studies. In addition, the volume and term discounts that are offered to end users should be made available to competitive local exchange carriers.

## **2. Guidelines For Establishing An Imputation Standard**

As an alternative to cost-based pricing, the Commission should also adopt an imputation standard that would ensure that the price a LEC charges a competitor for an unbundled loop is fully reflected in the LEC's end user price for an exchange access line. Mitigating circumstances that would justify a lower than TSLRIC price for unbundled loops might include, but are not limited to, scenarios where a competing local exchange carrier meeting all state and federal requirements is prohibited for reasons beyond its control from: (1) accessing the full array of revenue opportunities available to the dominant incumbent LEC;<sup>30</sup> (2) offering the full range

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<sup>30</sup> For example, a competing local exchange carrier would be prohibited from accessing the full array of revenue opportunities available to the dominant incumbent LEC where the competing carrier is denied the ability to: (1) set carrier switched access rates at parity with the rates charged by the dominant incumbent LEC; (2) participate in truly reciprocal compensation plans with the incumbent for the exchange of local traffic; or (3) charge for any other services at rates equivalent to the rates charged by the incumbent.

of local exchange access services the dominant incumbent LEC is permitted to offer;<sup>31</sup> contesting the whole of any relevant market served by the incumbent LEC;<sup>32</sup> or (4) accessing at TSLRIC-capped rates any other complementary essential bottleneck feature, facility or service element necessary to provide competitive local exchange service.<sup>33</sup>

Where such mitigating circumstances exist, the Commission should establish appropriate guidelines to require the pricing of unbundled loops at the lesser of TSLRIC or a rate to be determined using an inverse imputation standard. The inverse imputation standard would require the LEC to unbundle its local exchange network into the three major elements -- loops, ports and cross-connect elements -- and establish prices for those three elements such that (1) the sum of the prices of the unbundled rate elements is no greater than the price of the bundled exchange access line and (2) the ratio of price to cost for each element and the bundled exchange access

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<sup>31</sup> A competing local exchange carrier would be prohibited from offering the full range of local exchange and access services the incumbent LEC is permitted to offer where: (1) the competing carrier is required to terminate other carriers' traffic without compensation; (2) the competing carrier is required to participate in an intraLATA toll termination plan in which the incumbent LEC is designated as the sole toll carrier for the LATA; or (3) limitations are placed on the competing carrier's ability to offer vertical or horizontal services (such as operator, CLASS or other features) that do not apply equally to the incumbent LEC.

<sup>32</sup> A competing local exchange carrier would be prohibited from contesting the whole of any relevant market served by the incumbent LEC where: (1) the competing carrier is denied the ability to co-locate or purchase unbundled loops from any incumbent LEC wire center within the area the competing carrier is otherwise authorized to serve; (2) the competing carrier is limited to serving only certain classes of customers, or customers beyond or below a certain size or located within a certain limited geographic area; or (3) true local number portability, or an interim number portability solution that is economically, technically and administratively comparable to true local number portability from the end user's and competing carrier's perspective, is not available.

<sup>33</sup> Examples of essential bottleneck facilities, functions or services that a competing local exchange carrier might be prohibited from accessing at TSLRIC-capped rates might include: (1) directory assistance data or database; (2) directory listings and distribution; (3) operator trunks; (4) poles, conduit or building access; (5) 9-1-1 systems; (6) information service platforms operated by the dominant incumbent LEC; or (7) TRS systems.

line is the same. These two inverse imputation principles would require that the prices of the unbundled exchange access line components be derived from the existing access line prices established in the incumbent LEC's effective state tariffs.

The inverse imputation rules would be reflected mathematically as follows:

1.  $P_L + P_P + P_X = P_B$
2.  $P_B/C_B = P_L/C_L = P_P/C_P = P_X/C_X$

Where:

$P_L$  = Price of the unbundled loop (including EUCL)

$P_P$  = Price of the unbundled port

$P_X$  = Price of the unbundled cross-connect

$P_B$  = Price of the bundled exchange access line (including EUCL)

$C_L$  = Cost of the unbundled loop

$C_P$  = Cost of the unbundled port

$C_X$  = Cost of the unbundled cross-connect

$C_B$  = Cost of the bundled exchange access line

### **3. Interstate Pricing Flexibility for LECs Adhering to Voluntary Guidelines**

State regulatory bodies would be free to implement these guidelines for LECs subject to their jurisdiction.<sup>34</sup> If these guidelines are approved by state regulators and implemented in

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<sup>34</sup> The proposed guidelines are intended to leave the States with considerable flexibility to adapt their regulatory schemes to local conditions and policies. For example, the guidelines are silent as to whether the prices for bundled exchange access lines and unbundled loops should be geographically averaged or deaveraged; or as to what relationship should exist between business and residential rates. Under the Communications Act, these types of decisions are left to the State regulators. MFS only  
(continued...)

LEC tariffs, MFS proposes that the LEC should become subject to an alternative form of price cap regulation for the common line element. LECs subject to this alternative form of regulation would be exempt from 47 C.F.R. §§ 61.45(c) (the price cap adjustment formula for the common line basket), 61.46(d) (maximum carrier common line charge), and 69.203 (caps on the end user common line charge). Instead, these LECs would compute a Price Cap Index and Actual Price Index for a combined interstate and intrastate basket consisting of their interstate common line charges, state local exchange access line charges, and state unbundled access line element (loop, port, cross-connect) charges. LECs would be free to adjust individual rate elements within this basket, subject to the approval of State commissions to the extent required by State law, as long as they remain in compliance with the pricing guidelines described in the preceding subsections.

The alternative form of price cap regulation for LECs complying with the guidelines should also include enhanced pricing flexibility for LECs. In its comments in the Commission's pending review of price cap regulation, CC Docket No. 94-1 (filed May 9, 1994), MFS proposed that LECs could receive significant additional pricing flexibility if and when they demonstrated that the conditions necessary for effective local competition exist within a study area. MFS now proposes that compliance with the voluntary loop unbundling guidelines described above be adopted by the Commission as a "trigger" for the type of pricing flexibility described in the MFS comments in CC Docket No. 94-1. Of course, a LEC would also have

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<sup>34</sup>(...continued)

proposes that, if the State and the LEC wish to invoke additional interstate pricing flexibility under these guidelines, they must adopt a consistent approach to these pricing issues with respect to both bundled and unbundled services.

to demonstrate the existence of actual competition within a study area, as described in MFS' comments, before qualifying for pricing flexibility.

### **CONCLUSION**

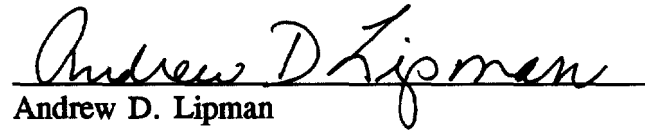
The emerging competition in the local exchange market creates enormous potential for new entrants to attract the investment capital necessary to further the development of an advanced telecommunications infrastructure necessary to meet the present and future needs of business and residential customers. Access to unbundled loops will allow competitive providers to meet user demands for state-of-the-art technologies, innovative applications and enhanced services without duplicating the existing ubiquitous networks constructed by the incumbent LECs with rate payer funds.

The time is ripe for the Commission to adopt rules requiring Tier 1 LECs (except NECA panel members) to (1) make available unbundled loops in any study area in which the state has authorized local exchange competition; (2) permit interconnection to such loops via tariffed expanded interconnection arrangements consistent with those for special and switched access (3) comply with uniform minimum technical criteria so that both incumbents and new entrants can be assure of compatibility between their networks; and (4) prohibit LECs from charging more for the interstate component of unbundled loops than they charge end users for the same service. In order to complement the pro-competitive actions of state legislatures and regulatory bodies and to provide national leadership, the Commission should also adopt voluntary guidelines for the pricing of unbundled loops.



Based on the foregoing, MFS respectfully requests that the Commission grant this  
Petition For Rulemaking.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrew D. Lipman", is written over a horizontal line.

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Dated: March 7, 1995



## **APPENDIX 1**

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### **REGULATORY AND PERMITTING OBSTACLES FACED BY NEW ENTRANTS**

MFS typically faces onerous regulatory and permitting impediments in deploying its networks. Local jurisdictions refuse or fail to recognize MFS' right to use the public way, despite MFS' FCC and State certifications as a public utility. Communities often attempt to extort exorbitant gross revenue-based franchise fees and encroachment fees (based upon linear feet of plant placed within a locality's jurisdiction, regardless of whether or not the plant is placed within the public way) as well as free conduit, inner duct, fiber optic cable, building entrances and telecommunication services from MFS as conditions precedent to a granting a franchise and construction permits. Typically, these exorbitant "franchise fees" bear no relationship to the cost of using and regulating the public way and are not incurred by the incumbent LEC. Some jurisdictions even attempt to extend their "taxing authority" to MFS activities that have no economic situs within the franchise area.

Many cities assume that they have the right to assess MFS the same 5% of gross revenue franchise fee that federal law allows them to assess against monopoly cable television franchises. However, these same franchising authorities usually seek to restrict MFS to route-specific franchises, rather than ubiquitous franchises that are enjoyed by monopoly cable providers and incumbent LECs. Furthermore, the CATV providers are assured of low cost utility pole attachment agreements by federal law while MFS is often subject to exorbitant pole attachment rates.

Most incumbent LECs enjoy advantageous joint user relationships with the electric utilities that typically own the poles in a given market. MFS is often forced to accept non-

negotiable contracts of adhesion that allocate a disproportionate amount of common costs from the regulated licensor to the non-regulated licensee. Thus, LECs can typically utilize expedited application procedures, attach at a low price and do their own make ready and construction work on electric utility poles. MFS typically endures a long and burdensome application process, pays exorbitant attachment fees and is forced to use costly electric utility crews for pole surveys, make ready and construction supervision. Lastly, LECs often have master permit agreements with municipalities that allow them to do installation and maintenance without filing individual permit applications.

MFS is also severely disadvantaged when attempting to gain access to end user buildings. LECs have traditionally enjoyed free and unimpeded access to customers' premises. LECs usually have an existing entrance from the public way. MFS often experiences municipal stonewalling and delaying of permits to build in the private way until unrelated municipal franchise demands have been met.

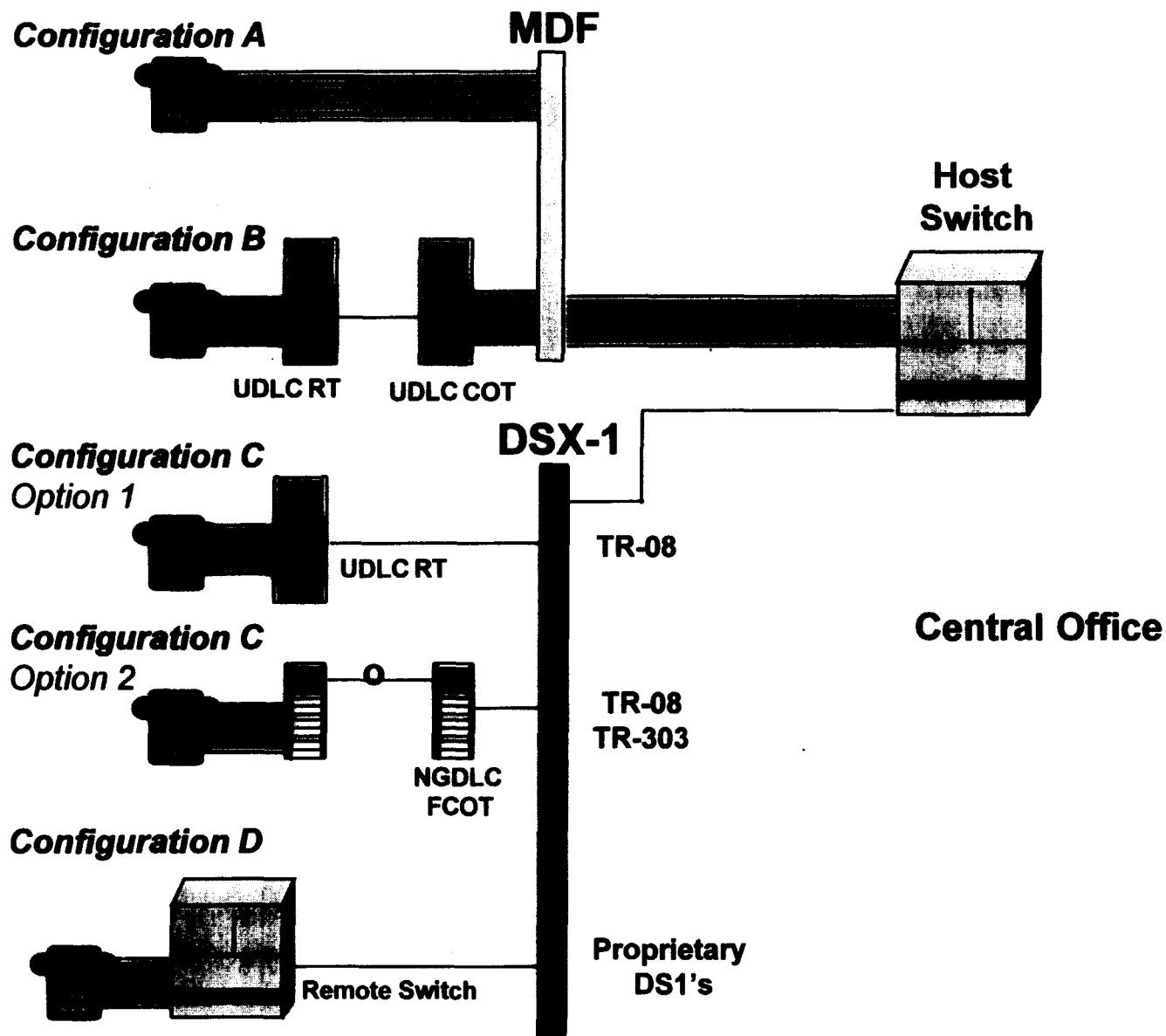
Building managers often provide a free "telephone room" to the LEC while denying building access or demanding exorbitant rents and fees from competitive access providers. Property owners often demand free services or "access rents" based upon gross receipts or number of circuits within a served building. Other building access problems still remain beyond the cost hurdle. Negotiating an access agreement with the managers of a large multi-tenant building owned by several partners is a time consuming process that can literally take months of time. Of course, no landlord imposes similar hurdles on the incumbent LEC, because it is no more possible to lease space that lacks telephone access than it would be to find tenants willing to do without electricity or running water.

Furthermore, MFS must still incur the time and expense of designing and constructing a secure point of presence (POP) within the building once an access agreement is finally signed. Property managers further increase MFS' cost disadvantage by forcing MFS to use only "specified" engineering and construction contractors to design and build the POP. Even after MFS' POP is built, physical connections from the POP to the customers' location are still an obstacle. LECs generally have unimpeded access to a buildings' inside wire, regardless of whether it is owned by the LEC or the building. However, MFS is usually forced to cable new inside wire from its POP to end users within a building.

Lastly, MFS does not enjoy the same ease of maintenance and emergency access to building facilities that LECs do. LEC personnel are routinely provided with keys for 24 hour access to cable and riser closets while MFS is often required to follow burdensome procedures for obtaining access to the same facilities.

## **APPENDIX 2**

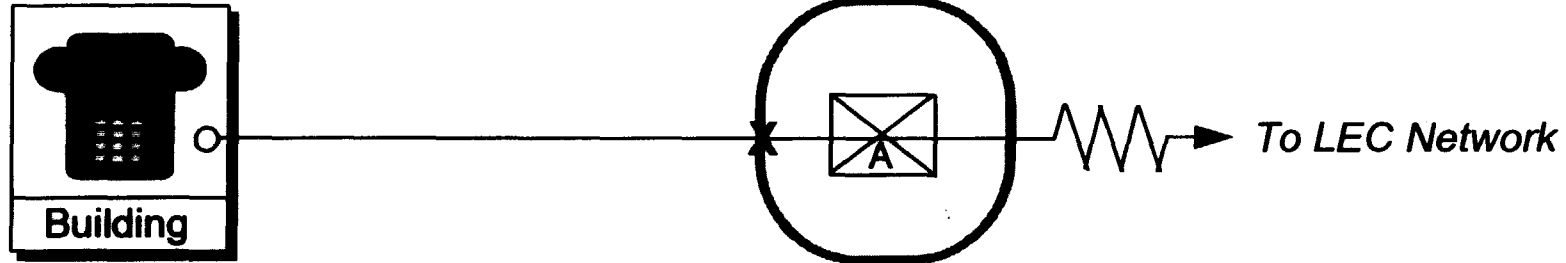
# Four Distribution Architectures



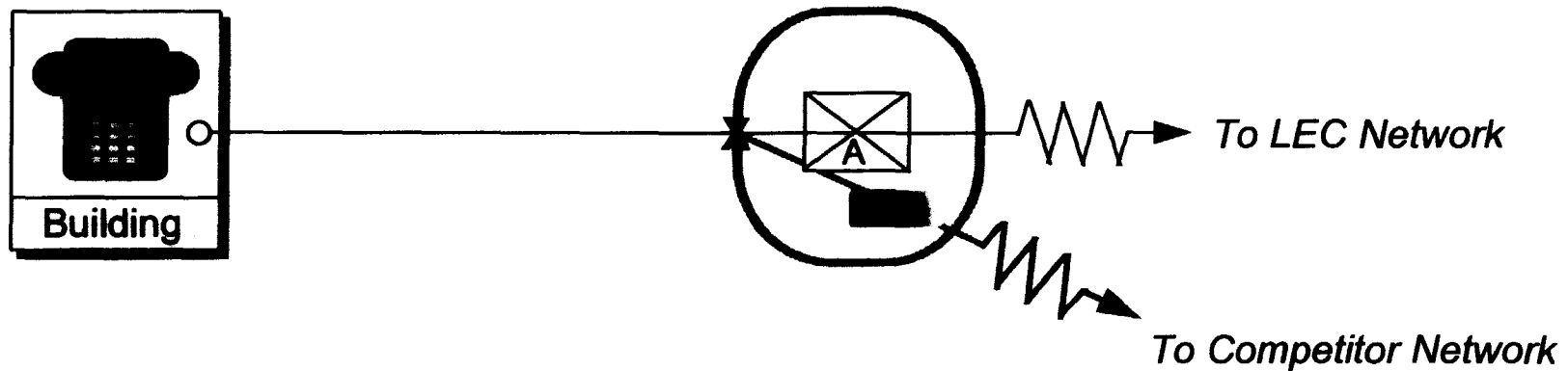
# The Local Loop - Configuration A

## Copper Distribution Plant

### LEC Network



### Interface to Competitor Network



Legend:



Customer (End User)



LEC Analog Switch Port



Collocated Competitor Equipment



VG Cross Connect



LEC Serving Wire Center



Demarcation Point



LEC Copper Loop

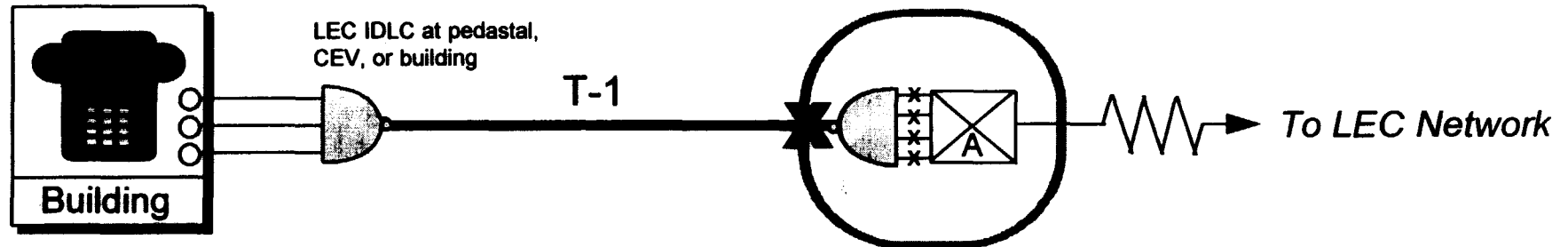
**MFS**



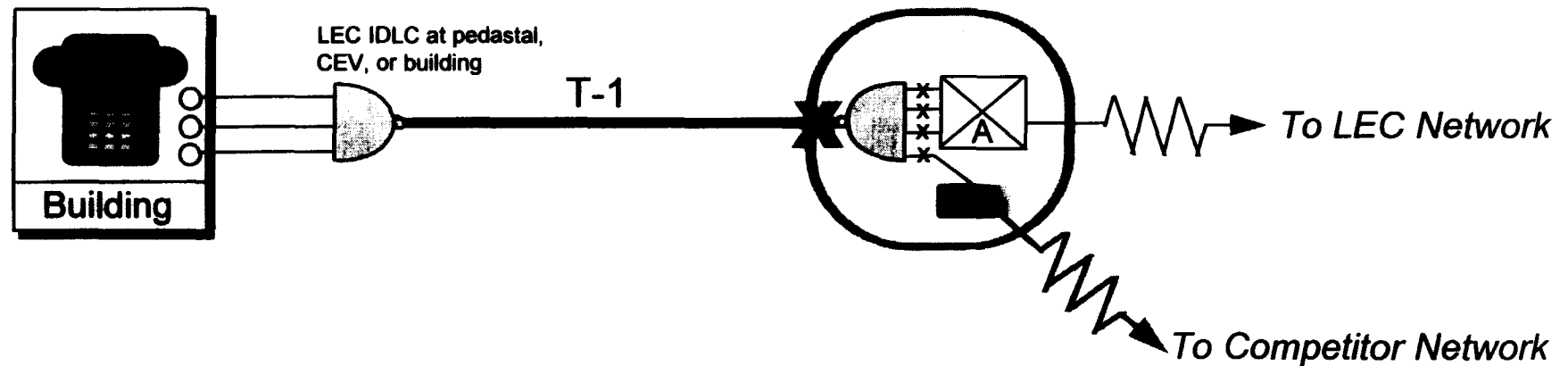
# The Local Loop - Configuration B

## Double-Ended Pair Gain

### LEC Network



### Interface to Competitor Network



#### Legend:



Customer (End User)



Demarcation Point

LEC Copper Distribution



LEC Feeder Plant



VG Cross Connect



T-1 Cross Connect



LEC Analog Switch Port



LEC Serving Wire Center



Competitor Equipment

CEV

Controlled Environment Vault



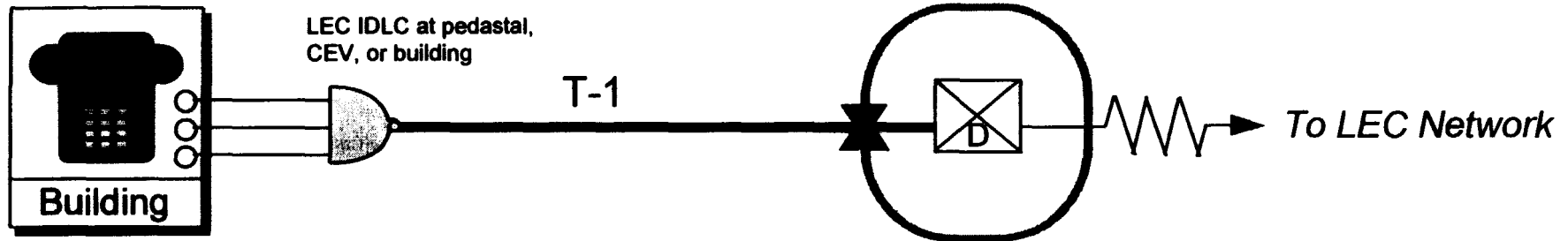
LEC IDLC

**MFS**

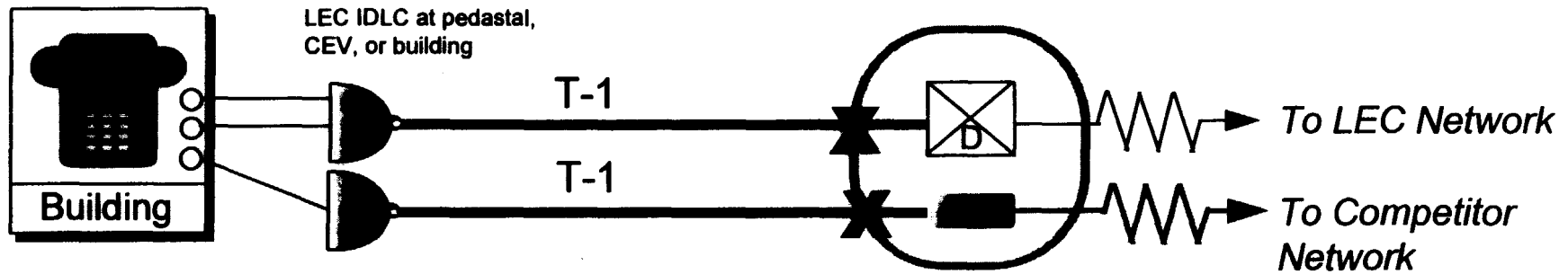
# The Local Loop - Configuration C

## Single-Ended Pair Gain

### LEC Network



### Interface to Competitor Network - Option 1



#### Legend:



Customer (End User)



Demarcation Point

LEC Copper Distribution



LEC IDLC



LEC Digital Switch Port



LEC Feeder Plant



T-1 Cross Connect



LEC Serving Wire Center



Collocated Competitor Equipment

CEV

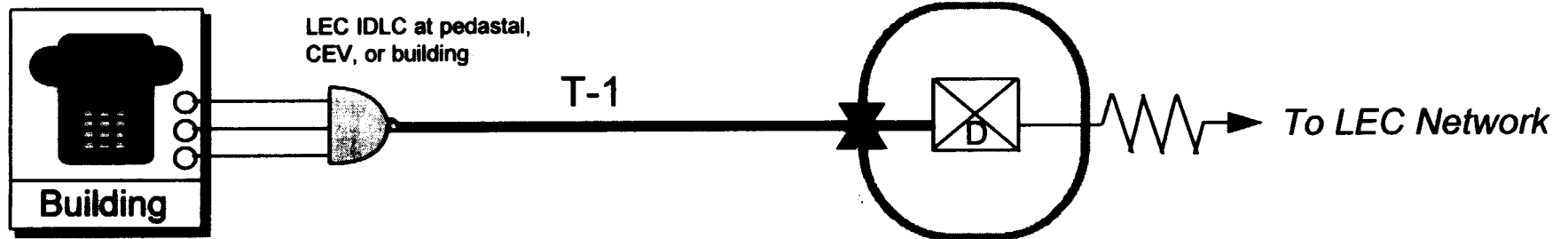
Controlled Environment Vault

**MFS**

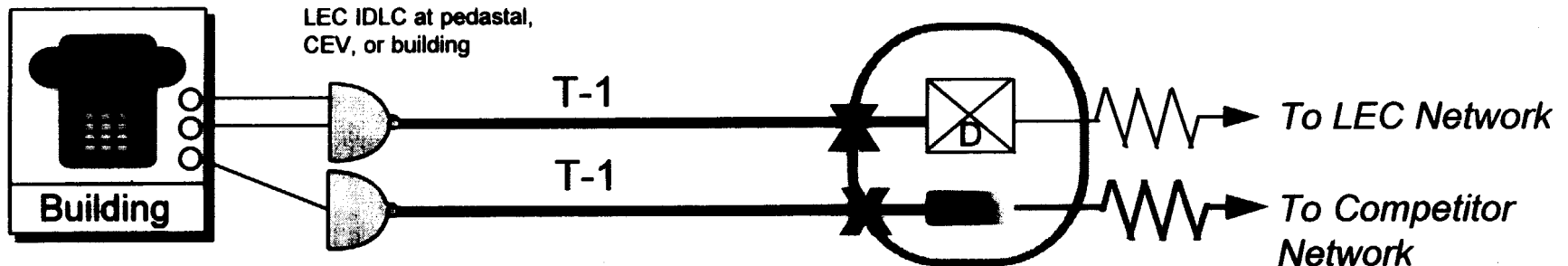
# The Local Loop - Configuration C

## Single-Ended Pair Gain

### LEC Network



### Interface to Competitor Network - Option 1



#### Legend:



Customer (End User)



Demarcation Point

LEC Copper Distribution



LEC Feeder Plant

LEC IDLC



LEC Digital Switch Port



T-1 Cross Connect



LEC Serving Wire Center



Collocated Competitor Equipment

CEV

Controlled Environment Vault

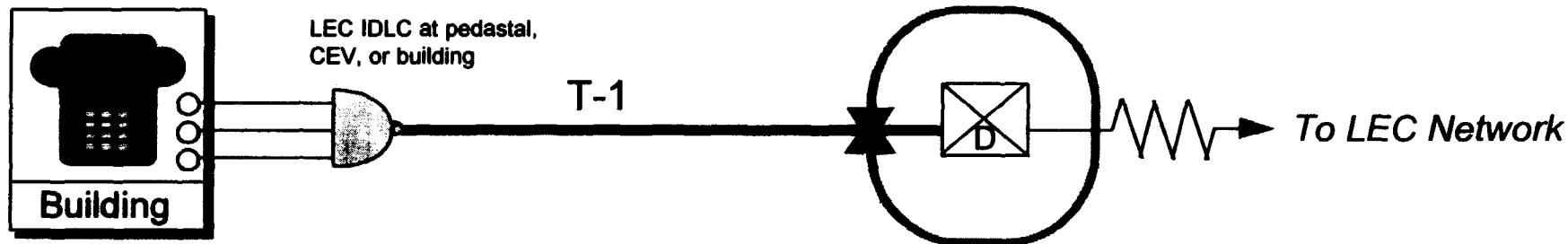
**MFS**

# The Local Loop - Configuration C

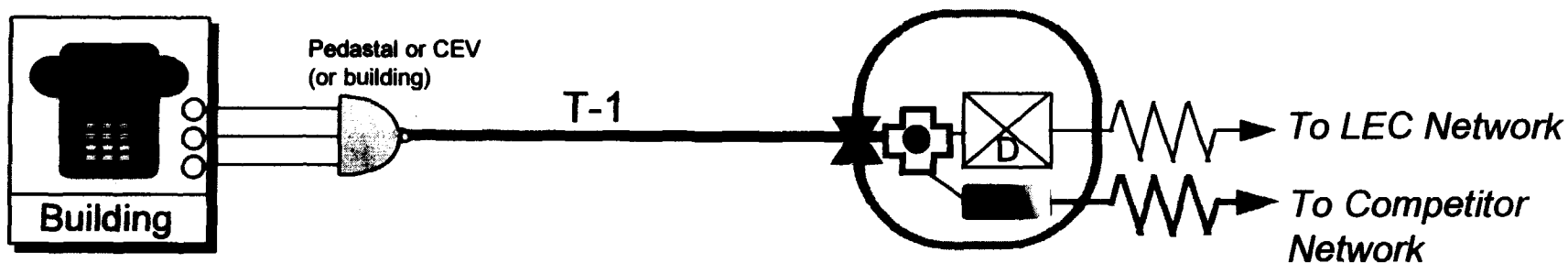
## Single-Ended Pair Gain

(continued)

### LEC Network



### Interface to Competitor Network - Option 2



#### Legend:



Customer (End User)



Demarcation Point

LEC Copper Distribution



LEC Feeder Plant

LEC IDLC



LEC Digital Switch Port



T-1 Cross Connect



LEC Serving Wire Center



LEC DACs or IDLC equipped with TSA functionality



Collocated Competitor Equipment

CEV

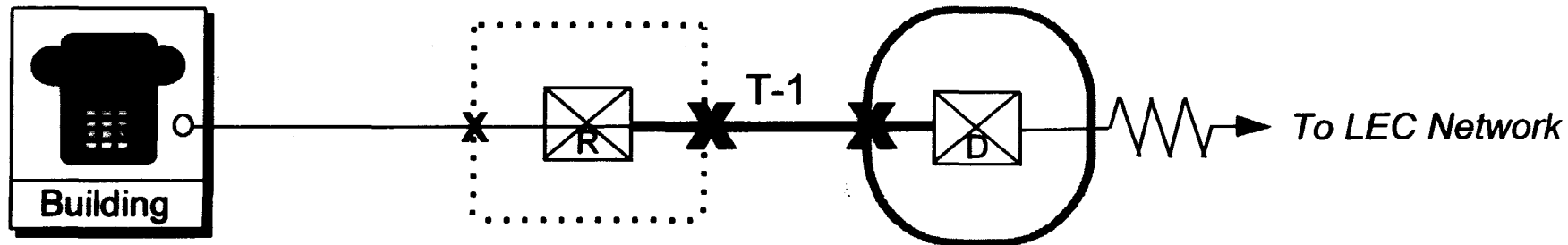
Controlled Environment Vault

**MFS**

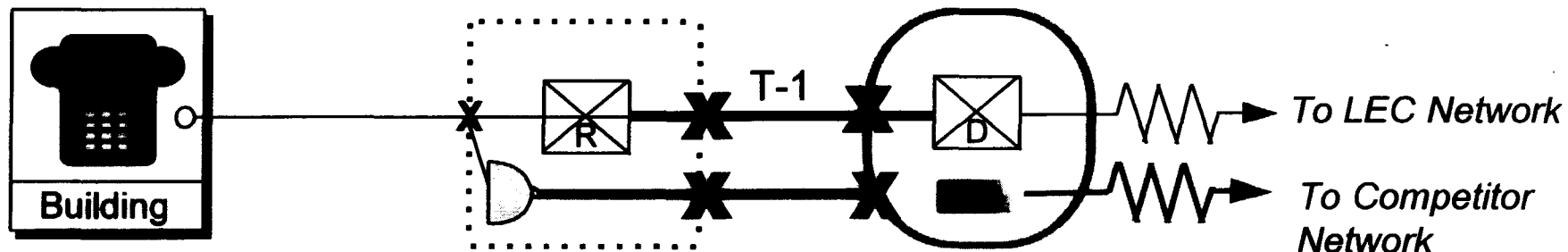
# The Local Loop - Configuration D

## Remote Switch for Used Pair Gain

### LEC Network



### Interface to Competitor Network



#### Legend:



Customer (End User)



Demarcation Point

LEC Copper Loop



Collocated Competitor Equipment



VG Cross Connect



LEC Remote Switch Port

LEC Feeder Plant



LEC Remote Switch Location



T-1 Cross Connect



LEC Digital Switch Port



LEC Serving Wire Center



LEC IDLC

**MFS**